

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD RIPLEY, and CAROL
RIPLEY,

Plaintiffs,

V.

LPL FINANCIAL CORP., a California Corporation,

Defendant.

4:10CV3115

MEMORANDUM AND ORDER

A telephonic conference was held to discuss the procedural posture created by defendant's pending Motion to Dismiss Plaintiff's Class Action Claims and Compel Arbitration of Plaintiffs' Individual Claims, (filing no. 10), and the plaintiff's notice of voluntary dismissal, (filing no. 13). The defendant filed evidence in support of its Rule 12(b)(6) motion to dismiss, thereby potentially converting the motion to a Rule 56 motion for summary judgment, (Fed. R. Civ. P 12(d)). The court questioned whether the defendant was consenting to plaintiff's dismissal of the case and, if not, raised the issue of whether the plaintiff can voluntarily dismiss this action without the defendant's consent.

Based on the parties' representations, the matters pending in this forum can be resolved by joint stipulation.

Accordingly,

IT IS ORDERED that on or before August 27, 2010:

- 1) The parties shall file a joint stipulation for dismissal of all claims, specifically identifying any issues to be dismissed with prejudice, any issues (if any) to be dismissed without prejudice to re-filing a lawsuit for full and final determination by a judicial forum, and any issues dismissed without prejudice for determination and resolution through arbitration.

- 2) The parties shall jointly submit a proposed Judgment of Dismissal for the court's review and approval. The proposed Judgment shall be submitted in WordPerfect or MS Word format by email to the chambers of the undersigned at czwart@ned.uscourts.gov.

DATED this 18th day of August, 2010.

BY THE COURT:

s/ Cheryl R. Zwart

United States Magistrate Judge